

APPEAL NO. 031130
FILED JUNE 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 2, 2003. The hearing officer resolved the disputed issues by deciding that the claimed injury of _____, occurred while the appellant (claimant) was in a state of intoxication as defined by Section 401.013 and therefore the respondent (carrier) is relieved from any and all liability for compensation, and disability. The claimant appealed and the carrier responded.

DECISION

Affirmed.

Section 406.032(1)(A) provides that an insurance carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. The definition of intoxication applicable to this case is the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance. Section 401.013(a)(2). As explained in Texas Workers' Compensation Commission Appeal No. 021751, decided August 26, 2002, an employee is presumed sober. However, when the carrier rebuts the presumption of sobriety with probative evidence of intoxication, the employee has the burden of proving that he was not intoxicated at the time of the injury. Conflicting evidence was presented on the intoxication issue. In evidence were two expert witnesses who concluded, based on toxicology reports, that the claimant was intoxicated at the time of the claimed injury. The hearing officer found that the carrier presented probative evidence that on _____, the claimant tested positive for both marijuana and cocaine and thus, shifted the burden to the claimant to prove that he was not intoxicated. The hearing officer noted in her Statement of the Evidence that she, "did not find [c]laimant credible at all." The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer found that at the time of the claimant's injury, the claimant failed to prove that he had the normal use of his mental and physical faculties and concluded that the carrier is relieved of liability because the claimed injury occurred while the claimant was in a state of intoxication. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.12d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge